

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DISTRICT

FRANCES A .WINN AND
THOMAS J. WINN

PLAINTIFF

VERSUS

CIVIL ACTION NO.: 1:07cv1019-LG-JMR

HARRISON COUNTY, MISSISSIPPI;
HARRISON COUNTY SHERIFF'S DEPARTMENT
GEORGE PAYNE, Individually, and in his official
capacity as Harrison County Sheriff, RICK GASTON,
individually and in his official capacity, PHIL TAYLOR,
in his official capacity, DIANE GASTON RILEY, individually
and in her official capacity, STEVEN CAMPBELL,
individually and in his official capacity, and UNKNOWN
DEFENDANTS 1-10.

DEFENDANTS

DEFENDANT RICK GASTON'S MEMORANDUM IN SUPPORT OF HIS
MOTION TO DISMISS
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 4(m)

COMES NOW, RICK GASTON, by and through his undersigned counsel, and respectfully requests that this Court dismiss the above lawsuit without prejudice for failure to timely serve process under Rule 4(m) of the Federal Rules of Civil Procedure, and submits this memorandum in support of his motion, to wit:

1. On August 17, 2007, Plaintiffs filed a complaint in the United States District Court for the Southern District of Mississippi, Southern Division. Among others, Plaintiff named Rick Gaston as a Defendant in the above styled cause.
2. On August 21, 2007, Plaintiff filed an amended complaint in the above styled cause.
3. To date, Plaintiffs have not served process on Rick Gaston in the above

styled cause.

4. Rule 4(m) of the Federal Rules of Civil Procedure provides that:

(m) Time Limit for Service. If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

F.R.C.P. 4(m)

5. Over three hundred and sixty (360) days have elapsed since Plaintiff has filed his initial pleading and amended pleading in the above styled cause.
6. Plaintiff can not show “good cause” as to why he has failed to serve Rick Gaston within one hundred and twenty (120) days of the initial filing of his complaint.

WHEREFORE PREMISES CONSIDERED, your Defendant, RICK GASTON, respectfully requests this Court dismiss him from the above styled lawsuit without prejudice due to untimely service of process as required under Rule 4(m) of the Federal Rules of Civil Procedure.

RESPECTFULLY SUBMITTED, this the 17th day of August 2008.

/s/ Ian Brendel _____
IAN BRENDEL
Attorney for Defendant

CERTIFICATE OF SERVICE

I, IAN BRENDEL, do hereby certify that I have this day electronically filed a true and correct copy of the above and foregoing with the Clerk of Court using the ECF system, which sent notification of such filing to the following:

Honorable Louis Guirola, Jr.
United States District Judge
814 Dan M. Russell, Jr. U.S. Courthouse
2012 15th Street
Gulfport, MS 39501

Honorable John Roper
Chief Magistrate Judge
870 Dan M. Russell, Jr. U.S. Courthouse
2012 15th Street
Gulfport, MS 39501

This the 17th day of August 2008.

BY: */s/ Ian Brendel*
IAN BRENDEL

IAN BRENDEL
Law Office of Jim Davis
Post Office Box 1839
Gulfport, MS 39502
Phone: (228) 864-1588
Fax: (228) 863-5008
MS Bar # 102659
E-mail: ian.brendel@yahoo.com